

Bones Brothers Ranch  
Box 505  
Birney, MT. 59012  
May 1, 2003

#E1-65

RN for  
KB

STB FINANCE DOCKET NO. 30186 (SUB-NO. 3)

Attn: Kenneth Blodgett,  
Surface Transportation Board  
Case Control Unit  
Washington, D.C. 20423-0001

RECEIVED  
MAY 12 2003  
MAIL  
MANAGEMENT  
STB

Dear Mr. Blodgett,

It is with deep regrets that we write to you yet again. It has been over twenty years since the Tongue River Railroad Company first applied to the ICC for permission to build its railway. Is your agency as tired of this speculative pipe dream of Mike Gustafson as we are? The railroad company has been given the permits they need to build their railroad, but have yet to do anything but burden the lives of the people who's property, and way of life are threatened by this scheme. Obviously this railroad is not as necessary as Mr. Gustafson and the Tongue River Railroad Company proclaim. It is unconscionable that one individual's dubious project can threaten an entire area for so long.

A few things have changed in this area since 1986 and Tongue River I was approved. The most important change being that the original purpose for the railroad no longer exists. Tongue River I was permitted to serve a non-existent coal mine proposed by Wesco Resources, a company with direct links to the Tongue River Railroad Company. That mine, Montco, lost its permit to mine in the 1990's. After receiving several extensions, the mine permit finally expired.

In 1996, Tongue River II was granted to facilitate the movement of Powder River Basin Coal to northern markets. Those markets are already being served evidently by existing railroads. With the approval by the Surface Transportation Board of the extension of the Dakota, Minnesota, and Eastern railroad into the Basin increased competition will result and efficiency should increase. There are no new mines operating in the Montana portion of the basin and Decker Coal has slowed production and laid off workers. Mines in the Gillette, Wyoming area of the Basin are also producing at below capacity and some have temporarily shut down operations. Clearly there isn't any need for the Tongue River Railroad to serve this market.

In Tongue River II the Surface Transportation Board acknowledged the stress the proposed Railway was having on area landowners and stipulated a 3 year time limit to build the rail line. The STB decided to drop this time limit, yet the stress caused to landowners has remained. It has been over 6 years and still the rail line hasn't figured out whom it's going to serve or where it wants to go. The threat of this railroad coming

through this area continues to devalue property along the proposed route and places uncertainty on landowner's long-term planning efforts.

In 2002 the state of Montana was given the Otter Creek Coal tracts by the Federal government. Tongue River Railroad Company will use this argument, we assume, as a new reason why the railroad is now a feasible project. The Otter Creek Coal Tracts were always available for coal leasing while they belonged to the Federal government yet have never been developed or permitted. Nothing has changed since the state took possession. The Otter Creek Coal is high in sodium and has too much overburden to be economically profitable.

The Record of Decision on the Montana Coal Bed Methane Project for the Powder River Basin has recently been signed, paving the way for tens of thousands of coal bed methane wells in the area. The cumulative impacts to the air, water and environment for this devastating project in combination with the Tongue River Railroad need to be studied. Our ranching operations can not sustain development on such a scale.

A few things have not changed since 1983 and the Tongue River Railroad's first application for a permit. The TRRC is still financially unviable and has continually bilked its investors for millions of dollars during that era. In his latest proposal, the CEO of the TRRC, Mike Gustafson, tried to get the Montana State legislature to help finance his railroad. Even with all his obvious political sway, this scam was unsuccessful. (See attached Billings Gazette Story). The railroad claims that they are part of a consortium of firms like Bechtel Enterprises and Kennecott Energy in developing their project. Why then does he need to get bonding from the state of Montana for \$600 million dollars? Any claims by the TRRC that they have the actual financial backing to build this railroad should be carefully investigated by your board.

Since 1983 the people of the Tongue River Valley have filled the record of this case with testimony and information explaining how and why this project will devastate this productive valley. We have said over and over again that we do not want this project. It has already caused hardship and stress to so many businesses and individuals. The defeat of this recent proposal in the MT legislature is just another indication of how unpopular the Tongue River Railroad is in Montana.

We would also like to comment on the information referring to the possible changes to the alignment of the railroad in the Tongue River I and II permits. This will be at least the 3<sup>rd</sup> alteration of the alignment for this stretch of the railroad. How are we as affected landowners, able to plan our future ranching operations with this constant fluctuation of the alignment?

We ask that instead of opening another scoping process on this project that the Board choose the **No-Build Alternative** for the first time in its history and close the record for good on this ill conceived scam.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Punt" and "Jeanie Alderson" joined together.

Terry Punt and Jeanie Alderson  
Bones Brothers Ranch



<http://www.billingsgazette.com/index.php?display=rednews/2003/04/18/build/local/lxgr-acoalmine.inc>

## Bond plan surprises governor

By JENNIFER McKEE

Gazette State Bureau

**HELENA** -- Gov. Judy Martz said she was caught off guard by an industry-backed plan for the state to issue up to \$800 million in bonds to develop a railroad to serve a proposed Eastern Montana coal mine. She said Thursday she wasn't sure she'd sign the bill.

"It was a surprise," she said. "These are all Fortune 500 companies that don't need us to bond. What's going on?"

The plan, introduced Tuesday as an amendment to Senate Bill 487, asks the state to increase the ceiling for special economic development revenue bonds offered by the Board of Investment from \$100 million to \$800 million. It also stretches the cap on bonds issued for a single project from \$50 million to \$600 million and includes railroads in the list of projects that qualify for such tax-exempt bonds.

Such bonds, said Carroll South, executive director of the Board of Investments, are not like general obligation bonds, which the state is obligated to repay, even at taxpayers' expense. Economic development bonds are issued to private investors for private projects, with the state acting as a conduit. The state is under no obligation to repay them in case of default. In certain circumstance, the interest from the bonds is exempt from state and federal income taxes, which makes them more attractive investments.

Rep. Ron Devlin, R-Terry, said when he introduced the bonding amendment that it was designed to encourage mining of the state-owned Otter Creek coal tracts -- 533 million tons of coal buried beneath the scrub brush prairie near Ashland.

Because the plan was brought up as an amendment to another bill, not as a bill, it will not be the topic of any public hearings. Devlin introduced the amendment nine days before the Legislature is scheduled to adjourn.

But Mike Gustafson, chief executive officer of Wesco Resources Inc., of Billings, said the plan to ask the state for bonding has been around a long time.

"To suggest this was a surprise is not factual," Gustafson said. "It may be the impression, but it's not factual."

Wesco is part of a consortium of companies, including Bechtel Enterprises Inc. and Kennecott Energy, that wants to mine the Otter Creek tracts. Their plan, Gustafson said, is to mine the coal, burn some of it on-site in a new coal-burning power plant and ship some of it to other power plants with the proposed new railroad.

Gustafson already has a permit to build a railroad.

Beginning last fall, Gustafson said, he and others started meeting with legislative leaders and the governor's office to work up possible legislation for the coming session that would help the project. Their plan included many parts, he said. The state has not done the studies or preliminary work necessary to offer coal leases.

One of the fruits of last fall's meetings was Senate Bill 409, by Sen. Corey Stapleton, R-Billings, which gave the state Department of Natural Resources and Conservation \$300,000 to get the tracts ready for leasing by studying the coal and preparing leasing packages. That bill has already been signed into law.

Another idea, Gustafson said, was asking the state to offer bonds to help the project. Gustafson said Thursday that that element was the most important of all the ideas that came out of the meetings.

But the idea of offering economic development bonds for the coal project was never introduced as a bill. Stapleton, at one point, requested an amendment to his SB409 that called for bonds for the project, but he never introduced it. Sen. Keith Bales, R-Otter, also had a bill suggesting bonds, but that bill was pulled before it could pass.

Gustafson said he didn't know why the bonding idea never survived, but said that he and others never stopped pushing for it.

"You don't know how many phone calls we've made," he said, adding that the way the bonding plan was brought up "could've been handled better."

Some, like South and Rep. Dave Lewis, R-Helena, former executive director of the Board of Investments, have questioned the real value of the bonds. Because the bonds would be for so much money, they would not qualify for the federal tax exemption. South said he wasn't sure if they would qualify for a state income tax exemption, either.

If the bonds have no tax advantage over other, conventional bonds issued to pay for major projects like railroads, why does Wesco and the rest of the consortium want them?

Gustafson said the value of the bonds is not really in their tax-exempt status, but in the message they send to private investors.

"It sends a message that Montana is prepared to do what they can to develop their assets," he said.

Senate Majority Leader Fred Thomas, R-Stevensville, who has been working closely with Gustafson and others on the Otter Creek project, said he didn't think the bonding amendment was really new.

**onthenet**  
**SB 487**  
**SB 409**

"It's not new to me," he said. "We've been talking about this all session."

Greg Petesch, the legislator's top lawyer and the person who actually drafted the bonding amendment, said Thomas was one of the people giving him direction as he prepared the amendment. In response to a question, Petesch said he never talked to Devlin, the lawmaker who actually introduced the idea on the floor of the House.

Martz said she first heard of the plan Tuesday while she was in her office signing other bills. She had her TV tuned to the Capitol's closed circuit television, which at the time was broadcasting the debate on the floor of the House. She was watching when Devlin introduced the amendment.

Martz said she had several concerns about the amendment. For one, it asks the state to issue almost \$1 billion in bonds and gives lawmakers and her administration only a few days to make such a decision. Also, she said, it was done without any public participation. She also has some concerns about how such a volume of bonds, issued under the state seal, might affect Montana's bonding rating.

Todd O'Hair, the governor's natural resources adviser, said the idea of bonding was discussed at meetings last fall, but there were never any specifics.

South said that even though the state would not be on the hook to repay the bonds in case of default, it could hurt the state's reputation if Montana issued bonds to a company that couldn't repay them.

Billings investment broker Gary Buchanan, former head of the Department of Commerce, agreed.

"We don't want the people in the American capital market thinking the state of Montana doesn't know what it's doing," he said. Buchanan, who also served on the now-defunct Montana Power Authority, also said the state should not be involved in financing a private project.

Martz said her administration was doing all it could to send the message that Montana is serious about developing Otter Creek. At a time when lawmakers are cutting state programs, she supported spending \$300,000 on a study of the coal tracts.

One thing everyone seems to agree on, however, is mining at Otter Creek as soon as possible.

Both Thomas and Martz said jump-starting development of the coal was a No. 1 priority. Gustafson said he'd like to see a mine at the area by 2010 at the latest.

The Senate on Thursday unanimously rejected the Devlin's amendment. The move doesn't mean the amendment is dead, however. The bill will go to a conference committee of House members and senators, where they will hash out their difference, possibly changing or even eliminating the amendment.

Gustafson said he thought that would be a bad thing, especially for his consortium.

"It's a cause for pause," he said. "Who can say we can hold this consortium together for two years? There's no guarantee."

**Click here to return.**